

# Austin & Rogers, P.A.

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November 6, 2017

**VIA, ELECTRONIC FILING**

The Honorable Jocelyn Boyd  
Chief Clerk and Administrator  
The Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, South Carolina 29210

Re: ● Docket 2017-281-E  
● Response to Motion to Compel

Dear Ms. Boyd:

Enclosed for filing in the above-referenced Docket, please find the Cover Sheet, the Complainants/Petitioners' Response to Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Motion to Compel and Certificate of Service.

Please notify the undersigned if you there is anything else you may need.

Respectfully Submitted,

/s/ \_\_\_\_\_  
Richard L. Whitt

RLW/cas

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2017-281-E**

IN RE: Shorthorn Solar, LLC; Rollins Solar, LLC; )  
 Juniper Solar, LLC; Meslam Solar, LLC; )  
 Culpepper Solar, LLC; Ashley Solar, LLC; )  
 Jefferson Solar, LLC; Madison Solar, LLC; )  
 Fairfield Solar, LLC; Bell Solar, LLC; )  
 Webster Solar, LLC; B&K Solar, LLC; )  
 GEB Solar, LLC; Ross Solar, LLC; )  
 Summerton Solar Farm, LLC; )  
 Clarendon Solar Farm, LLC; )  
 Azalea Solar LLC; Cardinal Solar LLC; )  
 Sunflower Solar LLC; Cosmos Solar LLC; )  
 Zinnia Solar LLC; Chester PV1, LLC; )  
 Ninety-Six PV1, LLC; Newberry PV1, LLC; )  
 Bradley PV1, LLC; Jonesville PV1, LLC; )  
 Ft. Lawn PV1, LLC; and )  
 Mt. Croghan PV1, LLC, )  
 )  
 Complainants/Petitioners, )  
 )  
 v. )  
 )  
 Duke Energy Carolinas, LLC and )  
 Duke Energy Progress, LLC, )  
 )  
 Defendants/Respondents. )

**RESPONSE  
TO DUKE ENERGY CAROLINAS,  
LLC AND DUKE ENERGY  
PROGRESS, LLC'S  
MOTION TO COMPEL**

**INTRODUCTION**

Pursuant to 26 S.C. Code Ann. Regs 103-829(A) and other applicable Rules of Practice and Procedure of the Public Service Commission of South Carolina, Complainants/Petitioners hereby respond in opposition to Defendants/Respondents, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's, (hereinafter together as, "Duke"), Motion to Compel, filed with this Commission on October 26, 2017.

Complainants/Petitioners filed timely objections in general and specifically, to Duke's **misdennominated**, "First Request for Production of Documents", to each of the Complainants. Factually, although Duke described its discovery as, "First Request for Production of Documents", it contained Production Requests, Data Requests and Interrogatories, (Duke's discovery was misdennominated, both on the face of Duke's discovery requests and even in Duke's Certificate of Service). Duke's garbled discovery document, included references to a provision that did not exist <sup>1</sup>in Duke's document. Furthermore, Duke even mixed discovery requests to include both a Production Request and an Interrogatory, in a single Request. Duke's request failed to include a reasonable time limiter of three years, the Statute of Limitations period in South Carolina, or reasonable geographic limiters. The Complainants/Petitioners respectfully requests that Duke's Motion to Compel be denied for the reasons explained below.

### **RESPONSE TO MOTION TO COMPEL**

**Duke's Motion to Compel with Exhibits is 43 pages in length**, and is a waste of the judicial economy of this Commission. For the effort that counsel put into a 43 page document, counsel could have, (i) reasonably redrafted Duke's improper discovery into a "Request for Production" and a, "Request for Interrogatories", (ii) removed erroneous reference to a provision that is not included in Duke's discovery, (iii) included the standard three year time limiter and (iv) included a reasonable geographic limiter. In a conversation with counsel opposite, Complainants' counsel indicated a willingness to provide the discovery that was unobjected to, and requested counsel opposite to modify or clarify Duke's requests. Two days after that conversation counsel opposite filed the Motion to Compel.

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<sup>1</sup> Duke's Request, "6(b)(i)(2)", refers to "7(b)(i)(2)", which provision does not appear in Duke's discovery request.

Complainants/Petitioners' Timely Objections.

Complainants/Petitioners' timely objections are hereby re-alleged and read as follows in

Complainants/Petitioners' objections,

“Complainants/Petitioners **object** to the form of Defendants/Respondents' discovery request of September 29, 2017. Specifically, Defendants/Respondents denominated its discovery **only** as, 'First Request for Production of Documents'. However, Complainants/Petitioners **object** because, it appears that Defendants/Respondents' discovery request includes, (i) 'Request for Production of Documents', (ii) 'Data Requests' and (iii) Interrogatories, ('data requests' are not listed under this Commission's Regulations R. 103-833). Complainants/Petitioners further note that the Certificate of Service utilized by Defendants/Respondents only designates the service of, 'First Request for Production of Documents'. Complainants/Petitioners **further object** that the following discovery requests are compound, including both possible Interrogatories and both possible Requests for Production, Request '5', Request '6', Request '8', Request '9', Request '10', Request '16' and Request '17'. The Complainants/Petitioners **further object** that the requests of the Defendants/Respondents either (i) contain no time limiter (ii) or contain a time limiter exceeding three years, the Statute of Limitations period under South Carolina Law and (iii) do not contain a reasonable geographic limiter. The format of Defendants/Respondents' discovery requests not being denominated clearly, as being an "Interrogatory" or a "Request for Production", makes it extremely difficult for the Complainants/Petitioners to accurately answer the discovery requests. The inability to discern the nature of Defendants/Respondents' discovery requests hampers accurate responses. For a specific example of a problem with Defendants/Respondents' discovery requests, Request, '6(b)(i)(2)', refers to '7(b)(i)(2)', which provision is not included in this discovery request. Complainants/Petitioners **further object** to the following Requests from Defendants/Respondents of September 29, 2017, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding, and/or do not contain a geographic or time limiter, or contain a time limiter exceeding three years, the Statute of Limitations period under South Carolina.”

### **CONCLUSION**

All of Complainants/Petitioners' objections were factual and based on the discovery document tendered by Duke. Duke should be required to correct the specific errors shown hereinabove and resubmit the discovery as a "Request for Production" and a "Set of Interrogatories". In the alternative, a telephone conference call should be scheduled between counsel and the Hearing Officer appointed by this Commission, Josh Minges, Esquire, to clarify the discovery requests. This Commission should deny the relief sought in Duke's Motion to Compel and award Complainants/Petitioners such other and further relief as this Commission deems necessary.

/s/

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Attorney for Southern Current LLC; Adger  
Solar, LLC; NARENCO, Ecoplexus, Inc., and  
the Complainants.

November 6, 2017  
Columbia, South Carolina

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
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DOCKET NO. 2017-281-E**

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 Duke Energy Carolinas, LLC and )  
 Duke Energy Progress, LLC, )  
 )  
 Defendants/Respondents.

**CERTIFICATE OF SERVICE**

I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have served the Complainants/Petitioners' Response to Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Motion to Compel and Certificate of Service via electronic mail on November 6, 2017, as indicated below.

**Andrew M. Bateman**

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**[Signature Page Follows]**

/s/ \_\_\_\_\_  
Carrie A. Schurg

November 6, 2017  
Columbia, South Carolina